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<b>M.S., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 21-0126</b>
	)	<b>Issued: September 9, 2021</b>
<b>DEPARTMENT OF COMMERCE,</b>	)	
<b>U.S. CENSUS BUREAU, Bethesda, MD,</b>	)	
<b>Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On November 5, 2020 appellant filed a timely appeal from an October 19, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

The issue is whether appellant has met her burden of proof to establish a left ankle condition causally related to the accepted September 7, 2020 employment incident.

<sup>2</sup> The Board notes that, following the October 19, 2020 decision, OWCP received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

### **FACTUAL HISTORY**

On September 8, 2020 appellant, then an 18-year-old census enumerator, filed a traumatic injury claim (Form CA-1) alleging that on September 7, 2020 she sustained a closed fracture of the left ankle when she fell from a porch when evading a homeowner's dog while in the performance of duty. She stopped work on that date.

In a note dated September 7, 2020, Dr. Krisseda S. Solomon, an emergency medicine specialist, limited appellant to light-duty work with no ambulation until cleared by an orthopedic surgeon.

On September 11, 2020 Dr. Alexander Martusiewicz, an orthopedic surgeon, diagnosed distal fibula fracture and recommended that appellant remain off from work until October 8, 2020.

In a September 11, 2020 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence necessary and provided a questionnaire for completion. OWCP afforded appellant 30 days to respond.

OWCP thereafter received a September 10, 2020 new patient visit report by Dr. Martusiewicz, who indicated that on the date appellant related a history of twisting her left ankle when she "jumped over a porch" while running away from a dog while working. Dr. Martusiewicz performed a physical examination of her left lower extremity and noted mild swelling and tenderness, but no bruising. He also reviewed x-rays and diagnosed a closed left distal fibula avulsion fracture.

October 8, 2020 x-rays revealed a stable appearing fibula avulsion fracture. In a letter of even date, Dr. Martusiewicz released appellant to work on November 2, 2020.

By decision dated October 19, 2020, OWCP accepted that the September 7, 2020 employment incident occurred as alleged. However, it denied the claim, finding that the medical evidence of record was insufficient to establish that the diagnosed left ankle condition was causally related to the accepted employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>7</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left ankle condition causally related to the accepted September 7, 2020 employment incident.

In his September 10, 2020 new patient visit report, Dr. Martusiewicz noted appellant's history of twisting her left ankle while working, and diagnosed a closed left distal fibula avulsion fracture. However, he did not provide an opinion on the issue of causal relationship. Likewise, in his September 11 and October 8, 2020 reports, Dr. Martusiewicz provided a work excuse and a subsequent release to work effective November 2, 2020. However, he did not provide an opinion on the issue of causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>10</sup> Therefore, Dr. Martusiewicz's September 10, 11 and October 8, 2020 reports are insufficient to establish appellant's claim.

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<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> *W.K.*, Docket No. 20-0765 (issued February 26, 2021); *S.W.*, Docket No. 19-1579 (issued October 9, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Similarly, Dr. Solomon's September 7, 2020 letter provided a work excuse, but he did not offer an opinion on the cause of appellant's condition. As previously noted, medical evidence that does not offer an opinion regarding an employee's condition or disability is of no probative value.<sup>11</sup> Thus, Dr. Solomon's report is also insufficient to the claim.

The remainder of the record consists of October 8, 2020 x-rays of appellant's left ankle. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the employment incident caused a diagnosed condition.<sup>12</sup>

As appellant has not submitted rationalized medical evidence to establish a left ankle condition causally related to the accepted September 7, 2020 employment incident, the Board finds that she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a left ankle condition causally related to the accepted September 7, 2020 employment incident.

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<sup>11</sup> *Id.*

<sup>12</sup> *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 19, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 9, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board